IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6670 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BIJAY SINGH S/O CHANDRIKA SINGH

Versus

UNION OF INDIA,THROUGH SECRETARY,MINISTRY OF FINANCE

Appearance:

1. Special Civil Application No. 6670 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR ANANT S DAVE for Respondents No. 1-2

MR KT DAVE AGP for Respondent No. 3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 08/11/2001

ORAL JUDGEMENT

1. In exercise of powers under Section 3 (1) of the Prevention of Illicit Traffic in Narcotic Drugs and

Psychotropic Substances Act, 1988 ('the Act' for short) Joint Secretary to the Government of India, vide order dated December 8, 2000, Annexure A to the petition, which was executed on January 23, 2001, detained the petitioner detenu.

2. The averments made in the petition manifest that the officers of DRI Regional Unit, Surat, had received specific intelligence that one Mahindra Jeep bearing registration No. MPR 7935 would be coming to Vapi at Hotel Rahat, GIDC Char Rastha, NH-8, Vapi at around 21.15 hours and the jeep would be loaded with Hashish concealed in cavities and the quantities of Hashish would be around 250 to 270 Kgs., the persons who will bring that jeep are Baliram Prasad and Bijay Singh to the local contract, and the delivery of the said vehicle would be given in front of hotel Rahat. The officers of DRI Regional Unit, Surat waited around hotel Rahat, GIDC Char Rastha, NH-8, Vapi on September 4, 2000 from 21.00 hours and as it was informed in the intelligence, one Mahindra Jeep bearing Reg.No. MPR 7935 arrived in front of hotel Rahat Vapi at 1.25 hrs. The officers intercepted the above said vehicle which was occupied by three persons. Before conducting the search of the said vehicle, the officers called for two independent panchas. The officers explained the panchas about the intelligence and interception of the vehicle and asked them to witness the search for which they willingly agreed. The Officers seized from the jeep narcotic substances in 531 slabs and they were weighing 265.5 Kgs. which had tested positive of Hashish under the provisions of NDPS Act, 1985. Thereafter the officers took samples each of 25 grams total weighing 375 grams. The remaining quantity of 265.125 Kgs. of substance were put in the trunks and the trucks were locked and cloth tied on the locks and sealed by using DRI seal No.5. The local illicit market value of the above mentioned seized 265.500 Kgs. of substance tested positive for Hashish is estimated at Rs.39,82,500/- A paper tag showing the case details was also affixed on each of the trunk. Thus, with a view to curb the illicit activities of the petitioner, the detaining authority thought it necessary to detain the petitioner under the Act and, therefore, by exercising powers under section 3 (1) of the Act, by passing the impugned order of detention, the petitioner is detained.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing the impugned order of

detention and setting him at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Mr. Prajapati, learned advocate for the petitioner has restricted his arguments to the effect that subjective satisfaction recorded by the detaining authority cannot be considered as genuine as there was no enough material necessitating the detention of a person in custody. The detaining authority has observed in its order that the petitioner would indulge in the similar activities after being released on bail and, therefore, it has become necessary to detain him. But on what basis the detaining authority has come to the said conclusion is not mentioned in the order. Therefore, according to the learned advocate for the petitioner, on this sole ground the order of detention deserves to be quashed and set aside.

5. Mr. Anant S Dave, learned counsel for respondent Nos.1 and 2 has opposed the petition by filing affidavit in reply which is sworn by Shuamala Mohan, Under Secretary on behalf of respondent Nos.1 and 2. He however does not dispute the aspect with respect to the observation made by the detaining authority in its order that there is every likelihood of the detenu's filing a bail application and his being released on bail and thereafter he is likely to indulge in similar activity. He therefore urged to pass appropriate order in light of the law laid down by the Supreme Court in this regard various judgments. Mr. K.T. Dave, learned AGP who appears on behalf of respondent No.3 has also made submissions in support of the detention order.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. A similar question arose before the Hon'ble Supreme Court in the case of Abdul Sathar Ibrahim Manik v. Union of India, AIR 1991 SC 2261 in which it has been held that there must be enough material necessitating the detention of a person in custody. If there is possibility of his being released on bail and on being so released, he is likely to indulge in prejudicial activities, then there must be compelling reason to pass detention order.

8. A similar view is also expressed by the Supreme Court in the case of Amritlal v. Union Government, 2000 SCW 4203. In the said case it has been observed that

there must be cogent material before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipsi dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail is not a cogent material and detention order based on such material is liable to be quashed. The reasoning that there is "likelihood to be released on bail" is different from "likelihood of his moving an application for bail".

9. Applying the aforesaid principles laid down by the Supreme Court to the facts of the present case, in the instant case the detaining authority has in para 21 of the grounds of detention has observed that he is satisfied that there is every likelihood of the detenu's filing bail application and also likelihood of his being released on bail and his indulging in illegal activities after his being released on bail. The detaining authority, therefore, satisfied that there is compelling necessity to detain the petitioner but it is not mentioned as to on what basis the authority has come to the conclusion that the petitioner would continue to indulge in similar activity after his being released on bail. Therefore, it is a clear that the observation made by the detaining authority in para 21 of the grounds of detention is a clear case of non-application of mind on the part of the detaining authority. Therefore, the impugned order of detention is required to be set aside and the petitioner is required to be set at liberty forthwith.

10. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention passed against the petitioner - detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A. M. Kapadia, J.)